

TITLE 312 NATURAL RESOURCES COMMISSION

LSA Document #98-52(F)

DIGEST

Adds 312 IAC 11 to govern construction activities along lakes. Repeals 310 IAC 6-2. Effective 30 days after filing with the secretary of state.

312 IAC 11

SECTION 1. 312 IAC 11 IS ADDED TO READ AS FOLLOWS:

ARTICLE 11. LAKE CONSTRUCTION ACTIVITIES

Rule 1. Administration

312 IAC 11-1-1 Purpose

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 1. (a) This article provides standards for the regulation of construction activities along and within lakes.

(b) This rule provides standards, with respect to activities along and within public freshwater lakes, which are subject to IC 14-26-2.

(c) This rule is also coordinated with the responsibilities in IC 14-15-7-3. (*Natural Resources Commission; 312 IAC 11-1-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2219*)

312 IAC 11-1-2 Authority to grant, condition, or deny a license

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 4-21.5; IC 14-26-2

Sec. 2. (a) The authority to grant, condition, or deny a license under IC 14-26 rests with the director or a delegate.

(b) An action taken under subsection (a) is subject to administrative review by the commission under IC 4-21.5 and 312 IAC 3-1.

(c) Before issuing a license under this rule, the department shall consider the following:

(1) The public trust doctrine.

(2) The likely impact upon the applicant and other affected persons, including the accretion or erosion of sand or sediments.

(*Natural Resources Commission; 312 IAC 11-1-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2219*)

Rule 2. Definitions

312 IAC 11-2-1 Definitions applicable to the regulation of public freshwater lakes

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-8; IC 14-26-2

Sec. 1. This rule provides definitions that apply to this article and are in addition to those set forth in IC 14-8, IC 14-26, and 312 IAC 1. (*Natural Resources Commission; 312 IAC 11-2-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220*)

312 IAC 11-2-2 "Area of special concern" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 2. "Area of special concern" means an area that contains at least one (1) of the following characteristics:

- (1) An unaltered shoreline where bulkhead seawalls are at least two hundred fifty (250) feet apart.**
- (2) Water quality or erosion control benefits.**
- (3) Bogs, fens, muck flats, sand flats, or marl beaches identified by the division of nature preserves in the Natural Community Classification System.**
- (4) More than one hundred (100) square feet of contiguous emergent vegetation or rooted vegetation with floating leaves.**

(Natural Resources Commission; 312 IAC 11-2-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)

312 IAC 11-2-3 "Bioengineered" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 3. "Bioengineered" means the use of a combination of biological elements (plant materials) and structural or mechanical reinforcements for stabilization, revetment, or erosion control. Biological and mechanical elements must function together in an integrated and complementary manner. *(Natural Resources Commission; 312 IAC 11-2-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

312 IAC 11-2-4 "Boatwell" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 4. "Boatwell" means a manmade excavation along the legally established or average normal waterline or shoreline of a public freshwater lake that:

- (1) is used for the mooring of a boat; and**
- (2) has been stabilized to prevent erosion.**

(Natural Resources Commission; 312 IAC 11-2-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)

312 IAC 11-2-5 "Bulkhead seawall" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 5. "Bulkhead seawall" means an impervious, vertical, or near vertical shoreline protection structure. *(Natural Resources Commission; 312 IAC 11-2-5; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

310 IAC 11-2-6 "Cumulative effect" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 6. "Cumulative effect" means the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what person undertakes the other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time. *(Natural Resources Commission; 312 IAC 11-2-6; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)*

312 IAC 11-2-7 "Developed area" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 7. "Developed area" means an area does not contain any of the following characteristics:

- (1) Unaltered shoreline.**
- (2) An area of special concern.**
- (3) A significant wetland.**

(Natural Resources Commission; 312 IAC 11-2-7; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)

310 IAC 11-2-8 "Director or a delegate" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 8. "Director or a delegate" means the director, the deputy director for the bureau of water and resource regulation, or an employee of the department to whom the director has delegated authority to perform a function under IC 14-26. (Natural Resources Commission; 312 IAC 11-2-8; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)

312 IAC 11-2-9 "Dry hydrant" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 9. "Dry hydrant" means a structure that does both of the following:

- (1) Extends lakeward of the legally established or average normal waterline or shoreline.**
- (2) Provides a means of suction water supply without direct drafting for fire protection.**

(Natural Resources Commission; 312 IAC 11-2-9; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)

312 IAC 11-2-10 "Fish attractor" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 10. "Fish attractor" means a structure or structures placed within a public freshwater lake that establishes an artificial reef or similar habitat and which is beneficial to fish populations. (Natural Resources Commission; 312 IAC 11-2-10; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2220)

312 IAC 11-2-11 "Glacial stone" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 11. "Glacial stone" means a rounded stone that satisfies both of the following:

- (1) Was produced by glacial activity.**
- (2) No individual stone weighs more than one hundred twenty (120) pounds.**

(Natural Resources Commission; 312 IAC 11-2-11; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)

312 IAC 11-2-12 "Marina" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 12. "Marina" means a structure that:

- (1) can service simultaneously at least five (5) watercraft; and**
- (2) provides, for a fee, one (1) or more of the following:**
 - (A) Watercraft engine fuel.**
 - (B) Docks.**
 - (C) Watercraft repair.**
 - (D) Watercraft sales or rental.**

(Natural Resources Commission; 312 IAC 11-2-12; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)

312 IAC 11-2-13 "Natural resources" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 13. "Natural resources" means the water, fish, plant life, and minerals in a public freshwater lake. (Natural Resources Commission; 312 IAC 11-2-13; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221)

312 IAC 11-2-14 "Natural scenic beauty" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 14. "Natural scenic beauty" means the natural condition as left by nature without manmade additions or alterations. (*Natural Resources Commission; 312 IAC 11-2-14; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

312 IAC 11-2-15 "Pea gravel" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 15. "Pea gravel" means rounded stone that satisfies each of the following conditions:

- (1) Each stone passes through a one-half ($\frac{1}{2}$) inch or a twelve and one-half ($12\frac{1}{2}$) millimeter sieve.
- (2) At least ninety-five percent (95%) of the stones pass through a three-eighths ($\frac{3}{8}$) inch sieve.
- (3) Not more than eighty percent (80%) of the stones pass through a three-sixteenths ($\frac{3}{16}$) inch (or a four and seventy-five hundredths (4.75) millimeter) sieve.
- (4) Not more than thirty-five percent (35%) of the stones pass through a three thirty-seconds ($\frac{3}{32}$) inch (or a two and thirty-six hundredths (2.36) millimeter) sieve.
- (5) Not more than four percent (4%) of the stones pass through a one-fiftieth ($\frac{1}{50}$) inch (or a six hundred (600) micrometer) sieve.

(*Natural Resources Commission; 312 IAC 11-2-15; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

312 IAC 11-2-16 "Permanent structure" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 16. "Permanent structure" means a structure that does not qualify as a temporary structure. (*Natural Resources Commission; 312 IAC 11-2-16; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

312 IAC 11-2-17 "Public freshwater lake" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 17. "Public freshwater lake" means a lake that has been used by the public with the acquiescence of a riparian owner. The term does not include any of the following:

- (1) Lake Michigan.
- (2) A lake lying wholly or in part within the city of Hammond.
- (3) A privately owned body of water used for the purpose of, or created as a result of, surface coal mining.

(*Natural Resources Commission; 312 IAC 11-2-17; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

312 IAC 11-2-18 "Recreational purpose" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 18. "Recreational purpose" means fishing, boating, swimming, the storage of water to maintain water levels, and any other purpose for which lakes are ordinarily used and adapted. (*Natural Resources Commission; 312 IAC 11-2-18; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

312 IAC 11-2-19 "Riparian owner" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 19. "Riparian owner" means the owner of land, or the owner of an interest in land sufficient to establish the same legal standing as the owner of land, bound by a lake. The term includes a littoral owner. (*Natural Resources Commission; 312 IAC 11-2-19; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2221*)

312 IAC 11-2-20 "Riprap" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 20. "Riprap" means angular, limestone rock that satisfies each of the following conditions:

- (1) No individual piece weighs more than one hundred twenty (120) pounds.**
- (2) At least ninety percent (90%) of the material passes through a twelve (12) inch sieve.**
- (3) Between twenty percent (20%) and sixty percent (60%) of the material passes through a six (6) inch sieve.**
- (4) Not more than ten percent (10%) of the material passes through a one and one-half (1½) inch sieve.**

(Natural Resources Commission; 312 IAC 11-2-20; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

312 IAC 11-2-21 "Seawall" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 21. "Seawall" means a manmade structure placed along the legally established or average normal waterline or shoreline of a public freshwater lake for the purpose of shoreline stabilization. *(Natural Resources Commission; 312 IAC 11-2-21; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)*

312 IAC 11-2-22 "Seawall reface" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 22. "Seawall reface" means the reinforcing of an existing seawall along the lakeward face. *(Natural Resources Commission; 312 IAC 11-2-22; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)*

312 IAC 11-2-23 "Significant environmental harm" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 23. "Significant environmental harm" means damage to natural or cultural resources, the individual or cumulative effect of which is found by the director or a delegate to be obvious and measurable (based upon the opinion of a professional qualified to assess the damage) and that:

- (1) creates a condition where recovery of affected resources is not likely to occur within an acceptable period; and**
- (2) cannot be adequately mitigated through the implementation of a mitigation plan approved by the director.**

(Natural Resources Commission; 312 IAC 11-2-23; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

312 IAC 11-2-24 "Significant wetland" defined

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 24. "Significant wetland" means a transitional area between terrestrial and deepwater habitats containing at least one (1) of the following:

- (1) At least two thousand five hundred (2,500) square feet of contiguous, emergent vegetation or rooted vegetation with floating leaves landward or lakeward of the legally established or average normal waterline or shoreline. The areal extent of the vegetation is independent of ownership.**
- (2) Adjacent wetland areas designated by a federal or state agency under one (1) of the following:**
 - (A) National Wetlands Inventory.**
 - (B) U.S. Army Corps of Engineers Wetlands Delineation Manual (1987).**
 - (C) National Food Security Act Manual (1994).**
- (3) The existence of a species listed at 15 IR 1312 in the Roster of Indiana Animals and Plants which are Extirpated, Endangered, Threatened, or Rare.**
- (4) An alteration of the area would result in significant environmental harm.**
- (5) Unaltered shoreline for at least two hundred fifty (250) feet.**

(Natural Resources Commission; 312 IAC 11-2-24; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

312 IAC 11-2-25 "Temporary structure" defined

Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 25. (a) "Temporary structure" means a structure that can be installed and removed from the waters of a public freshwater lake without using a crane, bulldozer, backhoe, or similar heavy or large machinery.

(b) Examples of a temporary structure include the following:

(1) A pier that:

(A) is supported by auger poles or other poles that do not exceed three and one-half (3½) inches in diameter and rest on the lake bed; and

(B) is not mounted in or comprised of concrete or cement.

(2) A boat shelter, boat lift, or boat hoist that:

(A) has a canvas top and sides;

(B) is supported by auger poles or other poles that do not exceed three and one-half (3½) inches in diameter;

(C) is not mounted in or comprised of concrete or cement;

(D) is designed to float or to rest upon the bed of the lake under its own weight if any structure to which it is attached complies with this section; and

(E) is not wider than ten (10) feet nor longer than twenty (20) feet.

(Natural Resources Commission; 312 IAC 11-2-25; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

312 IAC 11-2-26 "Unaltered shoreline" defined

Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 26. "Unaltered shoreline" means a shoreline that does not include lawful permanent structures.
(Natural Resources Commission; 312 IAC 11-2-26; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2222)

312 IAC 11-2-27 "Underwater beach" defined

Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 27. "Underwater beach" means an area of a lakebed that is both:

(1) lakeward of the waterline or shoreline of a public freshwater lake; and

(2) used for a recreational purposes, such as wading or swimming.

(Natural Resources Commission; 312 IAC 11-2-27; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223)

312 IAC 11-2-28 "Waterline or shoreline" defined

Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 28. "Waterline or shoreline" means the line formed on the bank or shore of a lake by the water surface at the legally established average normal level. However, if the water level has not been legally established, the waterline or shoreline is the line formed by the water surface at its average level as determined by existing water level records or, if such records are not available, by the action of the water that has marked upon soil of the bed of the lake a character distinct from that of the bank in respect to vegetation as well as the nature of the soil. *(Natural Resources Commission; 312 IAC 11-2-28; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223)*

Rule 3. Temporary Structures and Permanent Structures

312 IAC 11-3-1 General licenses for qualified temporary structures and dry hydrants

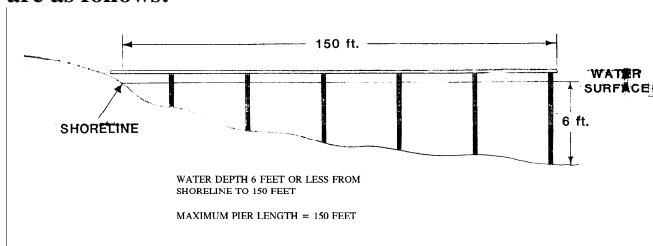
Authority: IC 14-10-2-4; IC 14-15-7-3
Affected: IC 14-26-2

Sec. 1. (a) The placement and maintenance of a temporary structure or a dry hydrant is authorized without a written license issued by the department under IC 14-26-2 and this rule if the temporary structure or dry hydrant qualifies under this section.

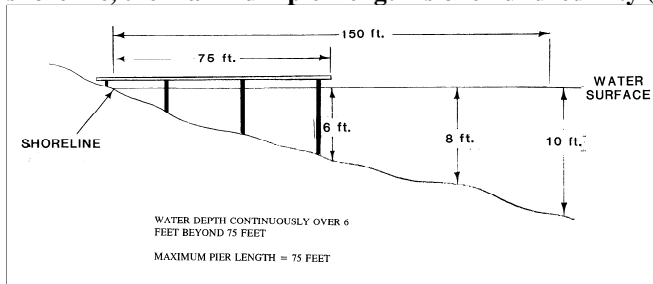
(b) In order for a temporary structure to qualify, the structure must satisfy each of the following:

- (1) Be easily removable.**
- (2) Not infringe on the access of an adjacent landowner to the public freshwater lake.**
- (3) Not unduly restrict navigation.**
- (4) Not be unusually wide or long relative to similar structures within the vicinity on the same public freshwater lake.**
- (5) Not extend more than one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.**
- (6) If a pier, not extend over water that is continuously more than six (6) feet deep to a distance of one hundred fifty (150) feet from the legally established or average normal waterline or shoreline.**
- (7) Not be a marina.**
- (8) Be placed by or with the acquiescence of a riparian owner.**

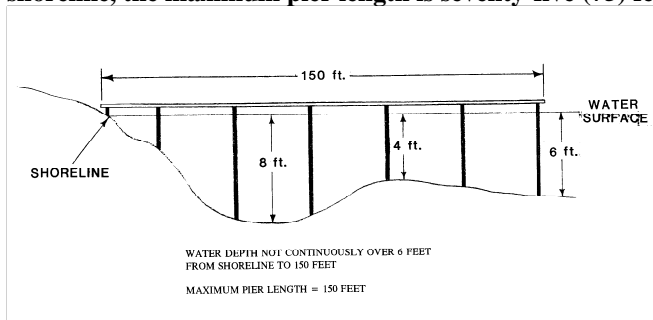
(c) Illustrations of maximum lengths for a pier or similar structure that may qualify under subsection (b) are as follows:



Where the water depth is six (6) feet or less from the shoreline to one hundred fifty (150) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.



Where the maximum water depth is continuously more than six (6) feet beyond seventy-five (75) feet from the shoreline, the maximum pier length is seventy-five (75) feet.



Where the maximum water depth is not continuously over six (6) feet from the shoreline, the maximum pier length is one hundred fifty (150) feet.

(d) In order for the placement, maintenance, and operation of a dry hydrant to qualify, the hydrant must satisfy each of the following:

- (1) Be sponsored or owned by a volunteer or full-time fire department recognized by the public safety training institute.
- (2) Be readily accessible from an all-weather road, public access site, or similar area.
- (3) Have a diameter of at least six (6) inches.
- (4) Be constructed of PVC pipe or a similar nontoxic material.
- (5) Extend no more than one hundred fifty (150) feet from the waterline or shoreline.
- (6) Have all portions of the hydrant and its appurtenant in-lake facilities be at least five (5) feet below the legally established or average normal water level.
- (7) Be marked with a danger buoy, which conforms with 310 IAC 2.1-4-6(a)(1), at the lakeward end of the hydrant.
- (8) Be equipped with a screen or straining device on the lakeward end.
- (9) Include neither stone nor concrete in or on the lakebed for either of the following:
 - (A) Bedding the intake pipe.
 - (B) Straining the intake water.
- (10) Be approved by the riparian landowner.

(Natural Resources Commission; 312 IAC 11-3-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2223)

312 IAC 11-3-2 Disputes relative to a temporary structure or dry hydrant placed through a general license

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 4-21.5-3.5; IC 14-26-2

Sec. 2. (a) A person may seek administrative review of the placement or maintenance of a temporary structure or a dry hydrant under section 1 of this rule.

(b) Administrative review under this section is subject to IC 4-21.5 and 312 IAC 3-1. If a dispute involves the placement of a pier or another temporary structure where the review of another structure authorized by a general license appears appropriate to a full and fair determination of the dispute, the administrative law judge may order the joinder of additional parties needed to accomplish that result.

(c) The administrative law judge shall commit the matter to mediation under IC 4-21.5-3.5 as soon as practicable. No administrative review brought under this section shall proceed to formal discovery or to a hearing without the completion of at least two (2) mediation sessions unless agreed in writing by all the parties.

(d) Unless otherwise ordered by the administrative law judge or agreed in writing by all the parties, any structure placed by a party under section 1 of this rule must be removed from within the waterline or shoreline upon the later of the following:

- (1) Ninety (90) days after filing of the request for administrative review.
- (2) January 1 of the year following the filing of the request for administrative review.

(e) In exercising discretion under subsection (d), an administrative law judge shall consider whether the structure poses a substantial intrusion or merely a de minimus intrusion to the interests protected by IC 14-26-2, IC 14-15-7-3, and this rule. *(Natural Resources Commission; 312 IAC 11-3-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2224)*

312 IAC 11-3-3 Written licenses for structures which do not qualify for a general license

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-11-4; IC 14-26-2

Sec. 3. (a) Except as provided in section 1 of this rule and in subsection (c), a structure placed within the waterline or shoreline of a public freshwater lake requires a written license issued by the department under IC 14-26-2 and this rule.

(b) Except as provided in 312 IAC 11-4-7, a structure that is located on a public freshwater lake more than one hundred fifty (150) feet and less than two hundred (200) feet from the legally established or average normal waterline or shoreline requires a written license under IC 14-26-2, this rule, IC 14-15-7-3, and 310

IAC 2.1-4. The department may provide that the multiple licensing requirements of this subsection be satisfied with a single written license.

(c) Except as provided in 312 IAC 11-4-7, a structure that is located on a public freshwater lake and not less than two hundred (200) feet from the waterline or shoreline does not require a license under IC 14-26-2 and this rule, but the structure does require a license under IC 14-15-7-3 and 310 IAC 2.1-4. Only a navigation aid or water recreation structure can be licensed under 310 IAC 2.1-4.

(d) The director or a delegate shall not issue a license under this rule, except upon a written determination that shows the following:

(1) The license, including conditions attached to the license, conforms with IC 14-26-2 and this rule. In making the determination, there shall be a determination that issuance of the permit would not result in significant environmental harm to the public freshwater lake.

(2) The applicant has demonstrated that an owner of each parcel of real estate, reasonably known to be adjacent to the real estate described in subsection (e)(2), has been notified under IC 14-11-4 and 312 IAC 2-3.

(e) An application for a license under this section must include the following:

(1) A description of the permanent structure, including plans and specifications of sufficient detail for the department to evaluate the project under IC 14-26-2 and this rule.

(2) A description of the real estate on which the structure would be located or which the structure would benefit.

(f) Examples of a structure that requires a written license under this section include the following:

(1) A marina.

(2) A new seawall or a seawall refacing.

(3) An underwater beach.

(4) A boatwell excavation, construction, or fill.

(5) A fish attractor.

(6) A pier that is supported by a structure permanently mounted in, or affixed to, the bed of the lake.

(7) A boathouse that is totally or partially enclosed on the sides. This structure ordinarily should be:

(A) placed over a boat well constructed landward of the legally established or average normal waterline or shoreline; and

(B) constructed only after a permit is obtained to alter the legally established or average normal waterline or shoreline.

(g) The requirements of this rule are in addition to the requirements of 312 IAC 6 for any public freshwater lake that is also a navigable waterway. (*Natural Resources Commission; 312 IAC 11-3-3; filed Feb 26, 1999, 5:49 p.m.; 22 IR 2224*)

Rule 4. Licensing of Particular Types of Structures

312 IAC 11-4-1 Marinas

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 1. (a) A written license under IC 14-26-2 and this rule is required to place a marina within a public freshwater lake.

(b) No person shall operate a marina unless the person secures and maintains one (1) of the following:

(1) A license under 327 IAC 3-2 for the construction and operation of a wastewater treatment facility or a sanitary sewer.

(2) A license under 410 IAC 6-10 for the construction of a commercial on-site wastewater disposal facility.

(3) An alternative written approval for wastewater disposal from an authorized governmental agency.

(c) The requirements of subsection (b) shall be made a condition for a license issued by the department to construct a new marina or to modify an existing marina. (*Natural Resources Commission; 312 IAC 11-4-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225*)

312 IAC 11-4-2 New seawalls

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 2. (a) A written license under IC 14-26-2 and this rule is required for the construction or placement of a seawall within or along the legally established or average normal waterline or shoreline of a public freshwater lake.

(b) If a new seawall is to be placed in a significant wetland, the seawall must be comprised of bioengineered materials.

(c) If a new seawall is to be placed in an area of special concern, the seawall must be comprised of either or both of the following:

- (1) Bioengineered materials.
- (2) Glacial stone.

(d) If a new seawall is to be placed in a developed area, the seawall must be comprised of one (1) or some combination of the following:

- (1) Bioengineered material.
- (2) Glacial stone.
- (3) Riprap.
- (4) Concrete.
- (5) Steel sheet piling.

(e) For a new seawall comprised of glacial stone or riprap, the base of the wall must not extend more than four (4) feet lakeward of the waterline or shoreline.

(f) The lakeward face of the new seawall must be located along the public freshwater lake's legally established or average normal waterline or shoreline as determined by the department.

(g) The lakeward extent of bioengineered material must be coordinated with the department before filing the license application.

(h) The director or a delegate may not issue a license for the placement of an impermeable material behind or beneath a new seawall.

(i) Filter cloth placed behind or beneath a new seawall must be properly anchored to prevent displacement or flotation.

(j) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-4-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225*)

312 IAC 11-4-3 Seawall refacing

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 3. (a) A written license under IC 14-26-2 and this rule is required to reface on the lakeward side of a seawall that is located within or along the waterline or shoreline of a public freshwater lake.

(b) The director or a delegate shall not issue a license to reface a seawall if the wall has been previously refaced.

(c) To qualify for a license if a seawall is to be refaced in a significant wetland, the seawall reface must be comprised of bioengineered materials.

(d) To qualify for a license if a seawall is to be refaced in an area of special concern, the seawall reface must be comprised of either or both of the following:

- (1) Bioengineered materials.
- (2) Glacial stone.

(e) To qualify for a license if a seawall is to be refaced in a developed area, the seawall reface must be comprised of one (1) or some combination of the following:

- (1) Bioengineered material.
- (2) Glacial stone.
- (3) Riprap.
- (4) Concrete.
- (5) Steel sheet piling.

(f) For a seawall reface comprised of:

- (1) glacial stone or riprap, the reface must not extend more than four (4) feet lakeward of the waterline or shoreline at the base of the existing wall;
- (2) concrete, the reface must:
 - (A) not extend more than twelve (12) inches lakeward of the existing seawall; and
 - (B) be keyed to the lakeward face of the existing seawall;
- (3) steel sheet piling, the reface must not extend more than six (6) inches lakeward of the existing seawall; and
- (4) bioengineered material, the lakeward extent of the reface must be coordinated with the department before filing the permit application.

(g) Any walk or structural tie constructed on top of the existing seawall must be located landward of the seawall face.

(h) The director or a delegate shall not issue a license for the placement of an impermeable material behind or beneath a seawall reface.

(i) Filter cloth placed behind or beneath the seawall reface must be properly anchored to prevent displacement or flotation.

(j) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-4-3; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2225*)

312 IAC 11-4-4 Underwater beaches

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 4. (a) A written license under IC 14-26-2 and this rule is required to place material for an underwater beach within a public freshwater lake.

(b) The director or a delegate shall not issue a license for the placement of filter cloth or an impermeable material beneath or in an underwater beach.

(c) The director or a delegate shall not issue a license for the placement of an underwater beach in a significant wetland.

(d) To qualify for a license to place an underwater beach in an area of special concern, the underwater beach must:

- (1) not exceed six hundred twenty-five (625) square feet;

- (2) not extend more than thirty (30) feet lakeward of the normal waterline or shoreline or to a depth of six (6) feet, whichever occurs earlier;
- (3) be placed on no more than one-half (½) the length of the waterline or shoreline of the riparian owner;
- (4) be comprised of clean, nontoxic pea gravel;
- (5) not exceed six (6) inches thick; and
- (6) be thin enough or be tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its average normal water level.

(e) To qualify for a license to place an underwater beach in a developed area, the underwater beach must:

- (1) be comprised of clean, nontoxic pea gravel;
- (2) not exceed six (6) inches thick;
- (3) be placed on no more than one-half (½) the length of the waterline or shoreline of the riparian owner;
- (4) extend no more than fifty (50) feet lakeward from the waterline or shoreline, or beyond a depth of six (6) feet, whichever occurs earlier; and
- (5) be thin enough or be tapered so the waterline or shoreline will not be extended lakeward when the public freshwater lake is at its normal water level.

(f) If beach material has been placed previously under this section, the additional material must not:

- (1) extend beyond the limits of the previous beach material; and
- (2) exceed the size restrictions specified in subsection (e).

(g) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-4-4; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226*)

312 IAC 11-4-5 Boatwell excavations or constructions

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 5. (a) A written license under IC 14-26-2 and this rule is required to excavate or construct a boatwell that is within or adjacent to the legally established or average normal waterline or shoreline of a public freshwater lake.

(b) The department may not issue a license for the excavation or construction of a boatwell in a significant wetland or an area of special concern.

(c) To qualify for a license to place a boatwell in a developed area, the excavation or construction of the boatwell must not:

- (1) adversely affect the:
 - (A) water level;
 - (B) significant wetlands; or
 - (C) natural resources;of the public freshwater lake;
- (2) exceed twenty (20) feet wide;
- (3) extend more than thirty (30) feet landward from the waterline or shoreline; and
- (4) be connected to the public freshwater lake until the landward sides of the boatwell have been stabilized to prevent erosion.

(d) Erosion from disturbed areas landward of the legally established or average normal waterline or shoreline must be controlled to prevent its transport into the lake. (*Natural Resources Commission; 312 IAC 11-4-5; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2226*)

312 IAC 11-4-6 Boatwell fills

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 6. (a) A written license under IC 14-26-2 and this rule is required to fill an existing boatwell along a public freshwater lake.

(b) To qualify for a license, the existing boatwell must:

- (1) not exceed twenty (20) feet wide;**
- (2) not extend more than thirty (30) feet landward from the waterline or shoreline;**
- (3) not be filled until a seawall or other permanent barrier has been constructed across the lakeward end of the boatwell to prevent the fill material from entering the public freshwater lake; and**
- (4) be filled with only clean, nontoxic material.**

(c) Erosion from disturbed areas landward of the waterline or shoreline must be controlled to prevent its transport into the lake. (Natural Resources Commission; 312 IAC 11-4-6; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2227)

312 IAC 11-4-7 Fish attractors

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 7. (a) A written license is required under IC 14-26-2 and this rule to construct or place a fish attractor within a public freshwater lake.

(b) To qualify for a license, the construction or placement of a fish attractor must:

- (1) be anchored to ensure proper settling;**
- (2) not be placed:**
 - (A) in a channel;**
 - (B) in a beach area;**
 - (C) near the lake surface nor in an area that would adversely affect public safety and navigation as determined by the division of law enforcement; and**
 - (D) to affect natural resources or natural scenic beauty of the lake in a detrimental manner otherwise prohibited by IC 14-26-2;**
- (3) use materials and methods to ensure safe placement; and**
- (4) be supervised by the division of fish and wildlife.**

(c) The licensee must promptly remove from the waters of the public freshwater lake any portion or portions of the fish attractor that become unattached from the permitted fish attractor. The responsibility is a condition of a license issued under this section. (Natural Resources Commission; 312 IAC 11-4-7; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2227)

Rule 5. Innovative Practices and Nonconforming Uses

312 IAC 11-5-1 Licenses within public freshwater lakes; innovative practices

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 14-26-2

Sec. 1. (a) The director or a delegate may issue a license that uses materials, techniques, or standards other than those approved in this article if the applicant demonstrates to the satisfaction of the department that activities under the permit satisfy both of the following:

- (1) Include new technology or material not previously or commonly used for the purpose sought.**
- (2) Do not affect the public safety, natural resources, natural scenic beauty, or water level of the lake in a detrimental manner otherwise prohibited by IC 14-26-2.**

(b) A person who wishes to secure a license under this section must confer and consult with the department before filing an application.

(c) Use of the following materials cannot qualify for a license under this section:

- (1) Railroad ties.**
- (2) Treated timber.**

- (3) Broken concrete.
- (4) Tires.
- (5) Scrap metal, appliances, or vehicle bodies.
- (6) Asphalt.
- (7) Another material not considered by the department to be innovative.

(Natural Resources Commission; 312 IAC 11-5-1; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2227)

312 IAC 11-5-2 Nonconforming uses; nuisances; modifications

Authority: IC 14-10-2-4; IC 14-15-7-3

Affected: IC 4-21.5-3-8; IC 4-21.5-4; IC 14-26-2

Sec. 2. (a) A structure or facility that was lawfully placed before the effective date of a section of this rule (including a structure or facility lawfully placed under a section of 310 IAC 6-2 before its repeal), which would be unlawful if placed after that date, is a lawful nonconforming use.

(b) A lawful nonconforming use under subsection (a) may be ordered to be removed or modified by the director, or the director's designee, if the structure or facility is either of the following:

- (1) A nuisance that adversely affects public safety, natural resources, natural scenic beauty, or water level of a public freshwater lake.**
- (2) Modified in a manner for which a license is required under IC 14-26-2 or this rule.**

(c) An order issued under subsection (b) is controlled by IC 4-21.5-3-8, unless an emergency exists, in which event IC 4-21.5-4 may be applied.

(d) Nothing in this rule affects the department's right to seek injunctive or other relief under IC 14-26 or another applicable law. *(Natural Resources Commission; 312 IAC 11-5-2; filed Feb 26, 1999, 5:49 p.m.: 22 IR 2228)*

SECTION 2. 310 IAC 6-2 IS REPEALED.

LSA Document #98-52(F)

Notice of Intent Published: April 1, 1998; 21 IR 2430

Proposed Rule Published: August 1, 1998; 21 IR 4245

Hearing Held: August 24, 1998, August 27, 1998, and September 4, 1998

Approved by Attorney General: February 11, 1999

Approved by Governor: February 26, 1999

Filed with Secretary of State: February 26, 1999, 5:49 p.m.

Incorporated Documents Filed with Secretary of State: None